IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

CRP.No. 608 of 2006()

AGAINST THE ORDER IN E.P.39/01 IN O.S.210/00 OF PRINCIPAL SUB.COURT, IRINJALAKUDA

REVN. PETITIONER: DECREE HOLDER:

MANUELSONS FINANCIAL ENTERPRISES (P) LTD
THRISSUR-1.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS: JUDGMENT DEBTORS:

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1. V.C. BALACHANDRAN, S/O.CHANDRASEKHARAN, KOORKANCHERY VILLAGE & DESOM, THRISSUR TALUK.

2. SATHI NARAYANAN, S/O. MUTTICHUR NARAYANAN, CHENTRAPPINNI VILLAGE, KODUNGALLUR TALUK.

3. LAHAR, S/O.MUTTICHUR NARAYANAN, -DO- -DO-.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P. NO. 608 OF 2006

Dated this the 13th day of December, 2007

ORDER

This civil revision petition is preferred against the order of the Subordinate Judge, Irinjalakuda whereby the court directed to carve out 30 cents of the mortgaged property and conduct the sale. It is against that decision, the decree holder has come up in revision. The court below has omitted to take note of the decision of the Division Bench of this court reported in **Dhanalakshmi Bank Ltd. V. Divakaran** [2000 (2) KLT 231]. This court held that what is to be noted here is that power is given to the court passing the preliminary decree for sale, to order either sale of whole of the mortgaged property or the sale of sufficient part of the mortgaged property. Once this power directing sale either on the whole or of the portion is exercised by the court which passes the decree, it is clear that the executing court has no power to go behind that direction in the decree or to alter either the mode of sale ordered or to consider whether anything less than what is directed by the decree to be sold need alone be sold. A perusal of the order under challenge would

reveal that the decree directed for the sale of 74 ½ cents of property. So, on the basis of the decision referred to above, the executing court has no power to reduce the same.

Therefore, I set aside the order passed by the court below and remit the case back to the executing court for fresh consideration and for passing appropriate orders in the light of the decision referred to above, after hearing the judgment debtors as well.

The civil revision petition is disposed of as above.

M.N.KRISHNAN, JUDGE

vps